

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CAA-05-2004 0027

IN THE MATTER OF:) Docket No.
)
City of Detroit,) Consent Agreement and Final
Department of Public) Order
Lighting)
Mistersky Power Station)
Detroit, Michigan)
)
Respondent.)

US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5

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CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1 This is a civil administrative action instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U S C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R Part 22 (the Consolidated Rules)

2 Section 22 13(b) of the Consolidated Rules provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO)

3 Complainant is, by lawful delegation, the Director of
the Air and Radiation Division, U.S. EPA, Region 5.

4 Respondent is the City of Detroit, which is, and was at
all times relevant to this CAFO, a municipality (municipal
corporation), operating under the laws of the State of Michigan.

II. REGULATORY BACKGROUND

5 The Acid Rain Program, which implements the Acid
Deposition Control provisions found in Subchapter IV-A of the
Clean Air Act, 42 U.S.C. §§ 7651-7651o, is codified at 40 C.F.R.
Parts 72 through 78. The Acid Rain Program sets forth
permitting, operating, monitoring, certification, recordkeeping
and reporting requirements for "affected units," as that term is
defined under the program.

6 Pursuant to 40 C.F.R. § 72.6, any unit listed in table 2
or 3 of § 73.10 is considered an "affected unit" subject to the
requirements of the Acid Rain Program.

7. The Acid Rain Program requires, among other things, that
the owner or operator of an affected unit monitor, record and
report sulfur dioxide (SO₂), nitrogen oxides (NO_x) and carbon
dioxide (CO₂) emissions, volumetric flow and opacity data

8 40 C.F.R. § 75.20, requires that the owner or operator
shall ensure that each continuous emission or opacity monitoring
system required meets the initial certification requirements of
this section.

9 40 C.F.R. § 75.21, requires that each continuous emission monitoring system shall be operated, calibrated and maintained according to the quality assurance and quality control procedures outlined in Appendix B of Part 75.

10 Appendix B § 2.3.1 requires that each primary and redundant backup monitoring system, perform relative accuracy test audits (RATA) semiannually or annually if the monitoring system meets accuracy requirements and qualifies for less frequent testing.

11 Appendix B § 2.3.3(a) allows for a grace period following the operating quarter in which the owner or operator of an affected unit must conduct the required RATA.

12 Appendix B § 2.3.3(c) states that if at the end of the grace period, the RATA has not been completed, data from the monitoring system shall be invalid.

13. 40 C.F.R. § 75.64, requires the owner or operator to submit quarterly EDRs for each affected unit to the Administrator.

14. The Administrator of U.S. EPA may promulgate regulations establishing standards of performance for new sources (NSPS) under Section 111 of the Act, 42 U.S.C. § 7411.

15 Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the *Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is*

Commenced After August 17, 1971 at 40 C F R. Part 60, Subpart D

16 40 C.F.R. § 60.40, states that any fossil-fuel-fired steam generating unit of more than 73 megawatt heat input is considered an "affected unit" subject to the requirements of the NSPS, Subpart D.

17. 40 C F.R. § 60.45, requires that affected units install, calibrate, maintain and operate continuous emission monitoring systems for measuring NOx and CO₂ emissions.

18 40 C F.R. §§ 60.7(c) and 60 45(g), require that the owner or operator of an affected unit submit semiannual emission and monitoring system performance reports.

19 The Administrator of U S EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Act that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U S C § 7413(d)(1), and 40 C F.R. Part 19

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action

21 The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

III. STIPULATED FACTS

22 Detroit owns and operates an emission source, known as the Mistersky Power Station, located at 5425 West Jefferson, Detroit, Michigan (Mistersky Facility)

23. The Mistersky Facility Boiler Unit 7 is an "affected unit" as that term is defined at 40 C F R. § 72.2 and as such, is subject to the Acid Rain Program at 40 C F R. Parts 75 through 78

24 The Mistersky Facility Boiler Unit 7 is an "affected unit" as that term is defined at 40 C F R. § 60.40, and as such, is subject to the NSPS regulations at 40 C F R. Part 60, Subparts A and D

25 40 C F.R. § 75.4 requires that initial certification on Boiler Unit 7 was required to be completed before January 1, 1995

26 Initial certification testing was not conducted on Boiler Unit 7 until January 14, 1996

27 Every quarter since at least the 4th quarter of 1998, the RATAs and EDRs for Boiler Unit 7 have been late, missing, in

unacceptable, incompatible or unreadable format, or missing data (quality assurance and quality control testing)

28 Since at least the 4th quarter of 2001, and through the 2nd quarter of 2003, quarterly NSPS reports for Boiler Unit 7 have been late, missing, in unacceptable, incompatible or unreadable format

29 On August 10, 2001, U.S. EPA issued an Administrative Order, under Section 113(a)(1) of the Act, to Detroit. The Administrative Order required the submittal of electronic data reporting records and annual compliance certification reports by August 20, 2001. The reports were not submitted until December 21, 2001.

30 On August 6, 2003, representatives from U.S. EPA, the Michigan Department of Environmental Quality, and Detroit met to discuss the violations at the Mistersky Facility and steps that Detroit would take to achieve compliance with the Act.

IV. VIOLATIONS

31 Detroit failed to submit its initial certification by January 1, 1995 in violation of 40 C.F.R. § 75.4

32 Detroit failed to submit complete and timely RATAs for Boiler Unit 7 at the Mistersky Facility in violation of 40 C.F.R. § 75.21 and Appendix B

33. Detroit failed to file complete and timely quarterly EDRs for Boiler Unit 7 at the Mistersky Facility in violation of 40 C.F.R. § 75.64

34. Detroit failed to submit complete and timely NSPS, Subpart D quarterly emission and monitoring system performance reports for Boiler Unit 7 at the Mistersky Facility in violation of 40 C.F.R. §§ 60.7(c) and 60.45(g).

35. Detroit failed to submit EDRs and annual compliance certification reports by the due date in the 113(a)(3)(B) Order in violation of Section 113 of the Act, 40 U.S.C. § 7413(a)(3)(B).

V. TERMS OF SETTLEMENT

36. The parties agree that settling this action is in the public interest, that the entry of this CAFO without the filing of a Complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Act and the terms of this CAFO;

NOW, THEREFORE, before the taking of any testimony, upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

37. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

38 Detroit admits the jurisdictional allegations in this CAFO and admits the facts stipulated in this CAFO

39. Detroit consents to the issuance of this CAFO and the assessment of a civil penalty

40 Detroit consents to all of the conditions in this CAFO

41 Detroit waives its right to a hearing as provided at 40 C.F.R. § 22.15(c)

42 Detroit waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d)

43. Detroit certifies that Boiler 7 is complying fully with the Acid Rain Program and NSPS, Subpart D of the Act.

44 This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to the Act, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Detroit arising from the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Detroit to comply with such laws and regulations

45. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party

represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it

46 Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

47 This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

48. "Parties" shall mean U S EPA and Detroit.

VI. CIVIL PENALTY

49. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Detroit's business, the economic impact of the penalty on Detroit's business, Detroit's full compliance history and good faith efforts to comply, the duration of the violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, Detroit's cooperation, U.S. EPA has determined that an appropriate civil penalty to settle this action is Sixty One Thousand Six Hundred Dollars (\$61,600).

50 Detroit must pay the \$61,600 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within ninety (90) calendar days after this CAFO is filed with the Regional Hearing Clerk, U S EPA, Region 5

51 Detroit must send the check to

U.S. Environmental Protection Agency
Region 5
P O Box 70753
Chicago, Illinois 60673

52. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to

Attn: Regional Hearing Clerk, (E-19J)
U S Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U S Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604-3590

Cynthia A King, (C-14J)
Office of Regional Counsel
U S Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

53 This civil penalty is not deductible for federal tax purposes

54 If Detroit does not pay timely the civil penalty, U S EPA may bring an action to collect any unpaid portion of the

penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

55 Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Detroit will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Detroit will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. GENERAL PROVISIONS

56. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in Sections III and IV of this CAFO. Full payment of the penalty identified in Paragraph 49 shall resolve Detroit's liability for these alleged violations and facts.

57 Nothing in this CAFO restricts U.S. EPA's authority to seek Detroit's compliance with the Act and other applicable laws and regulations.

58 This CAFO does not affect Detroit's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

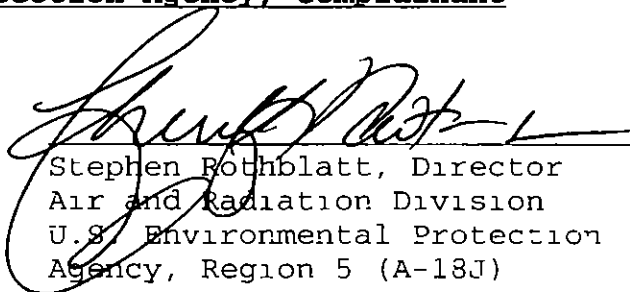
59 This CAFO constitutes an "enforcement response" as that term is used in "U S EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Detroit's "full compliance history" under Section 113(e) of the Act, 42 U S.C § 7413(e)

60 The terms of this CAFO bind the parties, and their successors, and assigns.

61. This CAFO constitutes the entire agreement between the parties.

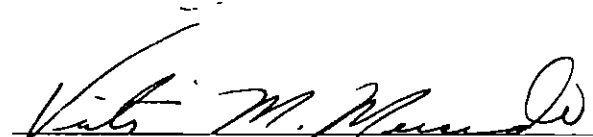
U.S. Environmental Protection Agency, Complainant

Date. 5/3/04


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

City of Detroit, Respondent

Date _____


Victor Mercado
Utilities Operations Chief
735 Randolph Street, Room 506
Detroit, Michigan 48226-2830

CONSENT AGREEMENT AND FINAL ORDER
City of Detroit, Department of Public Lighting
Mistersky Power Station
Docket No.

Final Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk

Dated 5/6/04

Bharat Mathur
per _____
Bharat Mathur
Acting Regional Administrator
U S Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-05-2004 0027

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Consent Agreement and Final Order, Docket No. ~~CAA-05-2004~~ **0027** Certified Mail, Return Receipt Requested, to:

Christopher S. Ammerman
Senior Assistant Corporation Counsel
City Of Detroit
660 Woodward Avenue
First National Building
Detroit, Michigan 48226-4550

and

City of Detroit, Department of Public Lighting
Mistersky Power Station
5427 West Jefferson
Detroit, Michigan 48213-1176

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REGION V

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I also certify that I sent a copy of the Consent Agreement and Final Order, Docket No. ~~CAA-05-2004~~ **0027**, by First Class Mail to:

Teresa Seidel
District Supervisor
Detroit Office
Cadillac Place, Suite 2-300
3058 West Grand Blvd.
Detroit Michigan, MN 48202-6058

on the 10th day of May, 2004.

Shanee Rucker
Shanee Rucker, Secretary
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0006 0177 3890